

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Terrell Price,

Plaintiff,

v.

Case No. 2:19-cv-3442

Ohio Department of
Rehabilitation and Corrections,
et al.,

Defendants.

ORDER

This is an action brought under 42 U.S.C. §1983 against the Ohio Department of Rehabilitation and Correction ("ODRC") and several individual defendants employed by the Lebanon Correctional Institution. Plaintiff alleges that the defendants failed to protect him from an attack by his cellmate in violation of the Eighth Amendment.

On August 16, 2019, the magistrate judge filed a report and recommendation on the initial screen of plaintiff's complaint pursuant to 28 U.S.C. §1915A, which requires the court, "in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity," to dismiss a complaint that fails to state a claim upon which relief may be granted. 28 U.S.C. §1915A(a)-(b)(1). The magistrate judge recommended that the plaintiff's claims against ODRC be dismissed because they are barred by the Eleventh Amendment of the United States Constitution and because the ODRC is not a "person" who can be held liable under §1983. The magistrate judge further recommended that because plaintiff is currently incarcerated at the Warren Correctional Institution, the remaining claims against the

individual defendants should be transferred to the United States District Court for the Southern District of Ohio, Western Division, where venue is proper.

The report and recommendation advised plaintiff that the failure to object to the report and recommendation would result in a waiver of the right to de novo review by the district judge and a waiver of the right to appeal the judgment of the district court. Doc. 4, p. 6. The deadline for filing objections has passed, and no objections were filed.

The court agrees with the report and recommendation (Doc. 4), and it is hereby adopted. The claims against ODRC are dismissed pursuant to 28 U.S.C. §1915(e)(2)(B)(ii) because plaintiff's complaint fails to state a claim for which relief may be granted as to that defendant. Plaintiff's remaining claims are transferred to the United States District Court for the Southern District of Ohio, Western Division, at Cincinnati, Ohio.

Date: September 6, 2019

s/James L. Graham
James L. Graham
United States District Judge